missioners, as individuals, and the sheriff, to recover damages for the alleged negligence which caused the death of her son. As to the county commissioners, *Held*, that the duty imposed on the county commissioners was a duty to the public only, and that therefore their failure to properly inspect the electric wiring of a jail, by reason of which the jail caught fire and burned, causing the death of plaintiff's son, gave no cause of action against the county commissioners in their individual capacity. *Miller* v. *Ouray Electric Light & Power Company* (1902), — Colo. App. —, 70 Pac. Rep. 447.

The court bases the above decision on the fact, that, as the duty imposed by statute refers to the care, custody and supervision of public property, the commissioners, in the performance of that duty, come within the class of public officers designated as subordinate governmental officers, whose duty is owing to the public at large, and not to any particular individual. In ascertaining whether a duty imposed by statute is public or private, the courts seem to take largely into consideration how far the legislature may have contemplated the individual liability urged when the duty was imposed, and what the effect of such individual liability will be. It has been held that prison managers are not liable to a prisoner, who, in performing work, loses his hand by a circular saw, *Alamango* v. *Supervisors*, 25 Hun, (N. Y.) 551; nor for an injury to a prisoner, who, on account of refractory conduct, is put into solitary confinement, and suffers because of insufficient food, clothing and fires. *Williams* v. *Adams*, 3 Allen, (Mass.) 171. A recent Nebraska case holds that the duty imposed upon county commissioners to levy a tax voted by a school district meeting is one owing to the public only. *School District* v. *Burress* (1902), — Neb. —, 89 N. W. Rep. 609. See also *Bassett* v. *Fish*, 75 N. Y. 303. In the case of officers charged with the duty of making and repairing highways and bridges, the courts show a tendency to uphold a much enlarged liability. *Hover* v. *Barkhoof*, 44 N. Y. 113; contra, *Worden* v. *Witt* (1895), — Idaho —, 39 Pac. 1114. Excepting any analogy between the principal case and the cases involving the liability of highway commissioners, it would seem that this case was decided in accordance with sound reasoning and a preponderance of authority. As to the doctrine of liability of public officers to private actions, see notes to *County Commissioners* v. *Duckett*, 83 Am. Dec. 557, and *Robinson* v. *Chamberlain*, 90 Am.Dec. 725.

SALES—CROPS TO BE GROWN—ASSUMPTION OF RISK.—The owner of an orchard sold "all the oranges my trees may produce in the years 1899 and 1900." The contract stipulated that the "purchaser assumes all risks." Before the first crop matured the trees were killed by frost. In an action to recover the consideration paid, *Held*, there could be no recovery and the purchaser was liable for the balance of the price unpaid. *Losecco* v. *Gregory* (1902), 108 La. —, 32 S. Rep. 985.

Where the contract contemplates the continued existence of a particular thing, its destruction rendering performance impossible discharges the contract; BEACH, MODERN LAW OF CONTRACT, Sec 773. But in this case the clause "assumes all risks" was construed to mean not the usual, known, ordinary risks but risks of whatever kind, ordinary and extraordinary, and the sale to be not of a future crop but of the mere hope of one. Somewhat analogous to this are the cases in which goods are sold "with all faults," meaning faults which that particular class or kind of goods might have; *Whitney* v. *Boardman*, 118 Mass. 242; MECHEM ON SALES, §§ 933, 1340.

SALES—RESERVATION OF TITLE—ACTION FOR PRICE.—Plaintiff sold and delivered tombstones to defendant under a contract providing for payment on delivery, but stipulating that title should remain in the vendor until payment.

In an action after delivery, but before the title passed, *Held*, that the seller could recover the contract price. *Jaeggli* v. *Phears* (1902), — Tex. —, 70 S. W. Rep. 330.

Generally actual or constructive delivery and the passing of title is necessary to maintain an action for the price: *Tufts* v. *Bennett*, 163 Mass. 398, 40 N. E. R. 172; *McCormick* v. *Balfany*, 78 Minn. 370, 31 N. W. R. 10; MECHEM ON SALES, § 1690; BENJAMIN ON SALES (7th Am. Ed.) Sec. 758, note; unless the seller agrees to pay independently of delivery: *White* v. *Solomon*, 164 Mass. 516, 42 N. E. 104, 30 L. R. A. 537. After delivery under such a contract as above the vendor has an election of remedies, (1) Recission, (2) Reception and damages, (3) Action for the price as in the principal case, by treating the title as in the vendee; MECHEM ON SALES, § 619. An action for the price bars the right to the other remedies: *Bailey* v. *Hervey*, 135 Mass. 172. Reception bars an action for the price: *Dowdell* v. *Furn. Co.*, 84 Ala. 316, 4 S. Rep. 31; *Aultman* v. *Olson*, 43 Minn. 409, 45 N. W. R. 852; *Perkins* v. *Grobben*, 116 Mich. 172, 74 N. W. R. 469, 39 L. R. A. 815, 72 Am. St. R. 512; *Seanor* v. *McLaughlin*, 165 Pa. St. 150, 30 Atl. R. 717, 32 L. R. A. 467. But when a purchase price note is given with the right to seize and sell the goods on default, applying the proceeds on such note, there may be both reception and an action on the note: *McCormick* v. *Koch*, 8 Okla. 374, 58 Pac. R. 626; *Dederick* v. *Wolfe*, 68 Miss. 500, 9 S. R. 350; *Ascue* v. *Aultman*, 2 Tex. Civ. App. 497; MECHEM ON SALES, § 623; contra, *Minn. Harv. Works* v. *Hally*, 27 Minn. 495, 8 S. W. R. 597; *Post* v. *Green*, 10 App. Div. 316; see note 32 L. R. A. 455. When goods have been appropriated to the contract without objection from the vendee, and title thus vested in him, the contract price may be recovered though he subsequently refuse to receive them: *Mitchell* v. *LeClair*, 165 Mass. 308, 43 N. E. R. 117; *Sanborn* v. *Benedict*, 78 Ill. 309; *Webber* v. *Minor*, 6 Bush (Ky.) 463, 99 Am. Dec. 688; *Black River L. C.* v. *Warner*, 93 Mo. 374, 6 S. W. R. 210; *McCormick* v. *Balfany*, supra; MECHEM ON SALES, §§ 754, 1674; BENJAMIN ON SALES, supra, Sec. 674, 758, note; contra, *Moody* v. *Brown*, 34 Me. 107, 56 Am. Dec. 640; *Rider* v. *Kelley*, 32 Vt. 268, 76 Am. Dec. 176; *Grammage* v. *Alexander*, 14 Tex. 415. Some courts allow such recovery even when the appropriation and constructive delivery are not made till after the vendee has countermanded his order; *Crown Vin. Co.* v. *Wehrs*, 59 Mo. App. 493; *Tufts* v. *Poness*, 32 Ont. 51; but contra see *Funke* v. *Allen*, 54 Neb. 407, 74 N. W. R. 832, 69 Am. St. R. 716; *McCormick* v. *Balfany*, supra; *Nat. Cash Reg. Co.* v. *Schmidt*, 48 App. Div. 472; MECHEM ON SALES, §§ 1674, 1694.

SURETYSHIP—BILLS AND NOTES—ALTERATION OF INSTRUMENTS.—A, as principal, and B, as surety, executed a note for five hundred dollars. The note was so drawn that there were unfilled spaces before and after the words "five hundred," which A, the principal, after securing the signature of B, the surety, filled up so that the note read as one for twenty-five hundred and fifty dollars. The principal discounted the note in this condition at the plaintiff bank. There was nothing suspicious or strange in the appearance of the note to indicate its infirmity and the plaintiff was a *bona fide* holder without notice of the alteration. Action was brought against the surety for twenty-five hundred and fifty dollars. *Held*, that defendant was liable for the full amount. *Hackett* v. *First Nat. Bank of Louisville* (1902), —Ky. —, 70 S. W. 664.

Authorities are agreed that where entire blanks are left in paper, there is an implied authority in the holder to fill them and that a *bona fide* holder may recover although the holder exceed all authority in filling the blanks. But where the instrument is complete in its parts and the only defect lies in the fact that it has been so drawn as to make alteration practicable, must the loss